IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5356 OF 2004

Patiraj Julai Pal ...Petitioner

Versus

The Municipal Corporation of

Gr.Bombay & Anr. ...Respondents

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Mr.T.D.Deshmukh for Petitioner.

Mr.N.V.Walawalkar i/b Mr.V.K.Khatu for Respondents.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 16, 2004.

P.C.

1. Heard Counsel appearing for the parties.

2. The core question that needs to be examined in the present Petition is whether there was sufficient evidence to establish the fact that the Petitioner was occupying disputed structure for residence prior to February 1986. That issue arises in view of the observations made by this

Court in decision dated February 1, 1991 while disposing of Writ Petition filed by the Petitioners therein, in which Petitioner's father was arrayed as Petitioner No.4. That Petition was filed on 27th February 1986. The Court, while examining the case of the Petitioners therein, for allocation of alternative accommodation in lieu of the structure occupied by them for residence, directed the Corporation to conduct a proper enquiry to ascertain which of the Petitioners was in occupation of which part of the structure in Ghaswala Compound for the purposes of residence. The order clearly records that only those Petitioners who would establish the position that they were occupying particular structure for the purposes of residence, will be entitled for alternative accommodation. Pursuant to the said order, enquiry was conducted and it has been found that the Petitioner's claim that the Petitioner or his father was occupying the disputed structure for the purpose of residence, was unacceptable. That finding reached by the Authority has been approved by the City Civil Court in the Judgment which is assailed in the present Writ Petition. In that

sense, it is finding of fact which is put in issue before this Court in present Writ Petition. It is not open for this Court to reappreciate the evidence on record to take a different view of the matter. Counsel for the Petitioner, however, placed reliance on the ration card issued in favour of the Petitioner, extract whereof is placed at Page 125, to contend that the ration card was issued in favour of the Petitioner as back as in the year 1985. This submission, however, overlooks the entry at Page 126, which reveals that ration card was issued on 15th May 1986, which is after February 1986 upon filing of the earlier Writ Petition. In that sense, the said ration card cannot be of any avail to the Petitioner.

3. It was also contended that the Petitioner was enrolled as Voter in the electoral roll. However, what is overlooked is that the Petitioner was enrolled as Voter in the Voters' List only after 1995, as can be discerned from the entry at page 124. Reliance was also placed on rent receipt, but that document alone cannot be the basis for accepting the case of the Petitioner. On

the other hand, it is seen that the Authority adopted a fair approach in applying the policy of allocation of the alternative accommodation in lieu of the disputed structure by ascertaining whether the Petitioner was in exclusive possession of the protected structure/premises prior to 1st January 1995, whether structure was in existence and "censused" prior to 1st January 1995, whether the occupant was enrolled in the electoral roll of the constituency prior to 1st January 1995, whether the occupant had ration card prior to 1st January 1995 at the address of the premises and whether the occupant had applied to Corporation for attornment on the municipal record. Out of five criterias, except possessing ration card prior to 1st January 1995, no other criteria has been fulfilled by the Petitioner.

4. Viewed in this perspective, no case for interference is made out. Rejected.

A.M.KHANWILKAR, J.